

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARVIN L. BROWN JR.,)
)
Plaintiff,)
)
v.)
)
NEBRASKA DEPARTMENT OF)
CORRECTIONAL SERVICES,)
ROBERT HOUSTON, Director,)
MICHAEL KENNEY, Director,)
SCOTT FRAKES, Director, DIANE)
SABAKA RHINE, RANDY KOHL,)
Medical Director, FRANCIS)
BRITTEN, Warden, MARIO)
PEARTZ, Warden, BRIAN GAGE,)
Warden, SCOTT BUSBOOM,)
Associate Warden, SHAWN)
SHERMAN, Unit Admin., DR. JEFF)
DAMME, DR. CASEBOLT,)
KIMBERLY DOHT, APRN,)
CHERYL FLINN, LUE YOUNG,)
CHRIS, PA/RNs, T PELLA, CPL)
Officer, TAYLOR, and FALK,)
Caseworker and Case Manager, all in)
their official and individual)
capacities,)
)
Defendants.)
)

8:16CV217

**MEMORANDUM
AND ORDER**

Pursuant to this court's September 21, 2016, order (Filing No. [20](#)), Plaintiff has filed an Amended Complaint (Filing No. [21](#)) that complies with the court's order to allege facts stating a plausible failure-to-accommodate claim under Title II of the Americans with Disabilities Act against the Nebraska Department of Correctional

Services and the other defendants in their official capacities.¹ Accordingly, this claim may proceed to service of process.

IT IS ORDERED:

1. This case may proceed to service of process as to Plaintiff's failure-to-accommodate claim under Title II of the Americans with Disabilities Act against the Nebraska Department of Correctional Services and all other defendants in their official capacities EXCEPT for defendants "CHRIS," "TAYLOR," and "FALK" because Plaintiff has failed to include enough information to identify these proposed defendants for purposes of service. If Plaintiff wishes to serve process upon defendants Chris, Taylor, and Falk, he must provide the court with sufficient detail to identify and locate these defendants.

2. The clerk of the court is directed to send to Plaintiff copies of the Complaint (Filing No. [1](#)), Supplemental Complaint (Filing No. [18](#)), Memorandum and Order on initial review (Filing No. [20](#)), Supplemental Amended Complaint (Filing No. [21](#)), and this Memorandum and Order, along with 16 summons forms and 16 USM 285 forms for service on the Nebraska Department of Correctional Services and the other defendants in their official capacities (with the exception of defendants Chris, Taylor, and Falk, as discussed in paragraph 1 above). (*See* attached Notice Regarding Service.)

3. If requested to do so, the United States Marshal will serve all process in this case without prepayment of fees from Plaintiff. In making such a request, Plaintiff must complete the USM 285 forms to be submitted to the clerk of the court with the completed summons forms. Without these documents, the United States Marshal will not serve process. Upon receipt of the completed forms, the clerk of the

¹See the court's order on initial review for an extensive discussion of Plaintiff's ADA claim. (Filing No. [20](#), at [CM/ECF pp. 8-12](#).)

court will sign the summons forms and forward them to the United States Marshal for service on the defendants, together with a copy of the Complaint (Filing No. [1](#)), Supplemental Complaint (Filing No. [18](#)), and Supplemental Amended Complaint (Filing No. [21](#)). In the event Plaintiff asks the United States Marshal to serve process, the clerk of the court will make copies of the Complaint, Supplemental Complaint, and Supplemental Amended Complaint for service on the defendants.

4. [Federal Rule of Civil Procedure 4\(m\)](#) requires service of the complaint on a defendant within 90 days of filing the complaint. However, Plaintiff is granted, on the court's own motion, an extension of time until 120 days from the date of this order to complete service of process. (*See* this court's General Order No. 2015-06.)

5. The clerk of the court is directed to set the following pro se case management deadline: March 30, 2017, check for completion of service of process.

DATED this 28th day of November, 2016.

BY THE COURT:

s/ Richard G. Kopf

Senior United States District Judge

Notice Regarding Federal Rule of Civil Procedure 4

[Federal Rule of Civil Procedure 4](#) requires that a defendant be served with the complaint and a summons. This is to make sure that the parties you are suing have notice of the lawsuit. [Federal Rule of Civil Procedure 4\(j\)](#) governs service of process on a state (*i.e.*, your official capacity claims).

In this case, Rule 4(j) means copies of the summons and complaints must be served on the Nebraska Attorney General's Office or the chief executive officer for the State of Nebraska.

You may ask the United States Marshal to serve process, as described in the court's order, because you are proceeding in forma pauperis.